

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Art House)
Tangible Personal Property Account No. P12299047000) Rutherford County
Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Rutherford County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$35,750	\$10,725

On July 10, 2007, the taxpayer filed an appeal with the State Board of Equalization ("State Board"). As indicated on the appeal form, this assessment was not appealed to the Rutherford County Board of Equalization ("county board") during its regular annual session for tax year 2007.

The undersigned administrative judge conducted a hearing of this matter on December 19, 2007 in Murfreesboro. The appellant James T. Duncan, d/b/a "The Art House," represented himself at the hearing. Assessor John Barbee was assisted by Pamela Oxsher, Supervisor of the Personal Property Section of his office.

Findings of Fact and Conclusions of Law

The Art House is located in an approximately 900-square-foot building at 225 North Front Street in Murfreesboro. At this store – the seventh in Mr. Duncan’s 22 years in the business – works of local artists are displayed and offered for sale on consignment.

Tenn. Code Ann. section 67-5-903 requires all business or professional entities to report annually to the assessor on the prescribed form the tangible personal property owned or leased and used (or held for use) in their business or profession. From 2004 through 2006, Mr. Duncan duly filed a tangible personal property schedule for The Art House with the Assessor's office; and, based on the reported information, a minimal assessment was made on this account.

On January 19, 2007, in accordance with Tenn. Code Ann. section 67-5-903(a), the Assessor's office mailed a blank schedule for that tax year to The Art House at the above address.¹ Not having received the completed schedule by the March 1 statutory deadline, the Assessor was obliged to make a "forced assessment" of the subject property. See Tenn. Code Ann. section 67-5-903(c). As a result of the implementation of a new program for determining

¹While he did not recall receiving this form, Mr. Duncan conceded that it may have been left unopened or unattended.

the amounts of assessments on the numerous non-reporting personal property accounts in Rutherford County, this assessment (\$10,725) far exceeded the valuations of the subject property in prior tax years.²

The Assessor's office mailed notice of the forced assessment of the subject property to the 225 North Front Street address on or about May 15, 2007. Although The Art House shares the outdoor mailbox there with a local photographer, Mr. Duncan testified that he had not experienced any chronic problems with lost or missing mail. But it was not until June 15 – the published deadline for appeal of 2007 property assessments to the county board – that he personally discovered this assessment change notice. Possibly, Mr. Duncan acknowledged, the notice had been overlooked or misplaced. After speaking with State Board Executive Secretary Kelsie Jones, he initiated this appeal in the hope of obtaining relief.

The validity of a forced assessment (or any other change of assessment) does not, of course, depend on whether notice of such assessment is actually received by the taxpayer. Rather, Tenn. Code Ann. section 67-5-903(c) merely requires that the assessor mail the notice to the taxpayer's "last known address" at least five days before the commencement of the county board's annual session on June 1. In this case, there is no question that the Assessor did so.

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization; however, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In 1991, the General Assembly an exception to this jurisdictional rule whereby:

The taxpayer shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the (State Board) shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. section 67-5-1412(e).

The Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived with the consent of the parties. [Emphasis added.]

²Essentially, the Assessor's new forced assessment program involved the formulation of "average," "below average," and "above average" values for the tangible personal property typically associated with various types of businesses. In the lexicon of this mass appraisal system, The Art House was coded as a below-average "art dealer."

Respectfully, after reviewing all the evidence of record, the administrative judge cannot recommend acceptance of this direct appeal under the "reasonable cause" statute. In the similar case of Michael & Stephanie Davis (Davidson County, Tax Year 1993, Final Decision and Order, November 13, 1995), the Assessment Appeals Commission held that:

...[T]here was testimony only that the (assessment change) notice was not received, and **we find no basis in this fact alone to demonstrate reasonable cause for failure to appeal to the county board of equalization.** [Emphasis added.]

Id. at p. 1.

The Commission did reach a different result in Mary M. Headrick and Detlef R. Matt (Knox County, Tax Year 1993, Order Recognizing Jurisdiction and Remanding the Appeal for a Hearing, November 5, 1996), where the appellants claimed not to have actual knowledge of an increased assessment until their receipt of the tax bill. But in that case, the taxpayers' claim was buttressed by evidence which tended to show a history of mail delivery problems in their neighborhood. No such proof exists here.

To his credit, as a veteran businessman who had completed and returned the required tangible personal property schedule in prior tax years, Mr. Duncan recognized that this duty is not negated by any glitch which might have made performance of it more difficult or inconvenient. Mr. Duncan also admitted that his failure to file such schedule timely in tax year 2007 and appeal the resulting forced assessment to the county board may have been attributable to his own neglect or oversight. Indeed, the record suggests that the appellant may have been confused by simultaneous correspondence from local officials pertaining to his obligations under the Business Tax Act (Tenn. Code Ann. sections 67-4-701 *et seq.*). The "reasonable cause" standard established in Tenn. Code Ann. section 67-5-1412(e) cannot justifiably be lowered just because of the magnitude of the apparent disparity between the disputed appraisal and the market value of the property in question.³ See ABG Caulking Contractors, Inc. (Davidson County, Tax Year 2004, Final Decision and Order, May 11, 2006).

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of

³The tangible personal property schedule completed by Mr. Duncan immediately after the hearing indicates that the total depreciated value of the subject property as of January 1, 2007 was less than \$1,000.

the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of January, 2008.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: James T. Duncan, Art House
John Barbee, Rutherford County Assessor of Property

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